IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 28376 of 2006(C)

PETITIONER:

P. SUMATHY, POKKITTAATH HOUSE,
AVITANALLOOR P.O., NADUVANNA VIA,
KOZHIKODE DISTRICT.

BY ADV. SRI.T.R.RAVI

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
   PRINCIPLE SECRETARY TO GOVERNMENT
   GENERAL ADMINISTRATION (FFPB) DEPARTMENT
   THIRUVANANTHAPURAM.

2. **THE DISTICT COLLECTOR, KOZHIKODE.**

3. **PUBLIC INFORMATION OFFICER,**
   GENERAL ADMINISTRATION DEPARTMENT,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.K.V.MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.28376/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.M5-9632/99 DT. 28.8.2000 ISSUED BY THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE LETTER DGT. 14.10.05 SENT BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE LETTER DT. 10.2.06 FROM THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P4:- COPY OF THE REPRESENTATION DT. 10.2.06 SUBMITTED BY THE PETITIONER BEFORE THE HONOURABLE CHIEF MINISTER.

EXT.P5:- COPY OF THE LETTER DT. 20.3.06 SUBMITTED BY THE PETITIONER TO THE HONOURABLE CHIEF MINISTER.

EXT.P6:- COPY OF THE INCOME CERTIFICATE DT. 30.3.06 ISSUED BY THE VILLAGE OFFICER.

EXT.P7:- COPY OF THE LETTER DT. 22.8.06 SENT BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P8:- COPY OF THE LETTER DT. 5.10.06 SENT TO THE 3RD RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

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T.R.RAMACHANDRAN NAIR, J.

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WP(C).No.28376 of 2006-C.

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Dated this the 8th day of August, 2007.

J U D G M E N T

The short question that arises herein is whether merely because of the fact that the petitioner is receiving the service family pension, that will defeat her right to receive the freedom fighters family pension. The petitioner is the widow of late Sri.K.Govindan who was a freedom fighter and was getting the State Freedom Fighters Pension. Ext.P1 is the order by which Sri.K.Govindan was granted pension under the Kerala Freedom Fighters Pension Scheme.

2. Sri.Govindan died on 31.10.2004. He was working as a teacher and was receiving service pension apart from the freedom fighters pension. It is stated that after his death the family pension allowable to the deceased was already sanctioned to her. By Ext.P2 the 2nd respondent sought for instructions from the Government as to whether the petitioner can be allowed the freedom fighters family pension since she is receiving service pension also. By Ext.P3 it was informed by the District Collector to the petitioner that the Government had informed that she is not entitled for the benefit of the freedom fighters family pension as she is receiving the family pension allowable under the State service. Ext.P4 is the further representation filed

by the petitioner addressed to the Hon'ble Chief Minister. Again by way of Exts.P5 and P6 she had produced the medical certificate as well as income certificate for claiming the benefit. But by Ext.P7 she was again informed that since she is receiving the family pension she is not entitled for the freedom fighter family pension. Aggrieved by Ext.P7 she has approached this Court.

3. The relevant clauses under the Kerala Freedom Fighters' Pension Rules, 1971 are clauses 10 and 11 which are extracted below:

> "10. The widow/minor sons/unmarried daughters who have not otherwise become independent of a Freedom Fighter who has been sanctioned a pension under rule 6 shall be eligible to the continuance of the pension.
>
> 11. The pension shall be payable till death if the grantee is the Freedom Fighter. If the grantee is the wife of a Freedom Fighter, the pension shall be payable till her death or remarriage. If the grantee is a minor, in the case of son the pension shall cease on his attaining the age of 18 and in the case of daughters, until they are married or otherwise become independent."

4. The learned Government Pleader contended that in view of the stipulations contained in clause 10, which applies commonly to the three categories widow/minor sons/unmarried daughters, the petitioner is not entitled for the family pension under the freedom fighters pension rules. It is contended that since she is receiving service family pension it will be deemed that she has got individual source and therefore going by the clear direction in

clause 10 she is not having eligibility for continuance of the pension.

5. The learned counsel for the petitioner submitted that a combined reading to clauses 10 and 11 will show that no restriction can be placed in the continuance of the pension as far as a widow is concerned. It is submitted that only as far as unmarried daughters are concerned, the stipulation that they should be not otherwise become independent will apply. Therefore, the clauses have to be examined in detail. Clause 10 shows that the eligibility for continuance of the pension is in respect of the widow/minor sons/unmarried daughters. Clause 11 will show that, if the grantee is the wife of a Freedom Fighter, the pension shall be payable till her death or remarriage. Therein it is not stipulated that a widow having independent income is not entitled for the grant. If the grantee is a minor, in the case of son the pension shall cease on his attaining the age of 18 and in the case of daughters, until they are married or otherwise become independent. The learned counsel for the petitioner also pointed out that as far as daughters are concerned even major daughters are also not excluded from the purview of the scheme and marriage alone is a crucial aspect to deny eligibility for continuance of pension. Therefore, when clause 10 is read along with clause 11, it will be clear that the words, 'who have not otherwise become independent' will apply only to unmarried daughters. Another clause relevant in this context is sub clause (xi) of clause 20 which states that, "in case the pension is granted to the widow

of a Freedom Fighter, the Collector shall cause a half yearly verification to see whether the widow get remarried." Therefore, the idea is clear that remarriage alone dis-entitles the widow for continuance of pension.

6. In the light of the above position, I am of the view that the stand taken in Exts.P3 and P7 that merely because of the fact that the petitioner is a recipient of a service pension she is not eligible for continuance of freedom fighters family pension. Exts.P3 and P7 are quashed. There will be a direction to the first respondent to pass appropriate orders sanctioning freedom fighters family pension to the petitioner who is the widow of late Sri.K.Govindan. The arrears as on today also will be disbursed accordingly. The same shall be done within a period of two months from the date of production of a copy of this judgment.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-